

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 558 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BACHUBHAI L PATEL

Versus

STATE OF GUJARAT

Appearance:

MR S.G. UPPAL for the appellant (appointed)

MR S.R.DIVEDITA, APP, for the respondent.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 01/07/96

ORAL JUDGEMENT (per PANCHAL, J.)

This appeal filed under S. 374 of the Code of Criminal Procedure, 1973 is directed against the judgment and order dated June 30, 1988, rendered by the learned Sessions Judge, Valsad, in Sessions Case No. 59 of 1987, by which the appellant is convicted under S.302 of the I.P.Code and sentenced to R.I for life. 2. The prosecution case in short is that deceased Laljibhai Mandiyabhai was residing in Village Mota Pondha, Taluka Dharampur, District Navsari, together with his family members including the appellant, who is one of his sons. Near the house where the deceased was residing, there is a vada for keeping goats. The incident took place on May 7, 1987. On that day, the appellant had gone to G.I.D.C., Vapi for doing his usual work and after returning home, had demanded loaves from his wife, Sheela. Sheela was not in a position to cook and therefore, loaves were cooked by deceased Laljibhai Mandiyabhai. The appellant demanded loaves from his deceased father. Thereupon the deceased informed the appellant that his loaves were kept in the cupboard. However, the appellant did not dine. After taking evening meals, the deceased and his wife Somli, who is the mother of the appellant went to sleep in the vada for the purpose of looking after the goats kept there. At about 12'0 clock in the midnight, the appellant again came at the place where the deceased was sleeping, and tried to know from him as to where the loaves were kept. The deceased informed the appellant again that the loaves were kept in the cupboard. The prosecution case is that thereupon the appellant went inside the house and came back with a wooden pestle. The appellant thereafter gave a blow with wooden pestle on the head of the deceased as a result of which the deceased sustained serious injuries. The mother of the appellant who was resting on the cot raised shouts and therefore, other family members collected at the place where the incident had taken place. Bhanabhai Mandiyabhai, the real brother of the deceased was also called and informed about the incident. Bhanabhai Mandiyabhai lodged first information report with Kaparada Police Station on May 8, 1987 at about 10.15 a.m.

Investigation into the case was made by Kantibhai Somabhai Patel, who was then discharging duties as PSI of Kaparada Police Station. At the conclusion of the investigation, the appellant was charge-sheeted for the offence under S.302 of the I.P.Code. As the offence was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court for trial. The learned Sessions Judge framed charge at Ex.2 against the appellant under S.302 of the I.P.Code. The charge was read over and explained to the appellant. The appellant pleaded not guilty to the charge and claimed to be tried. Therefore, in order to prove its case, the prosecution examined following witnesses :

1. Dr.Gamanbhai Panchabhai Patel PW 1, Ex. 11, 2.
Bhagubhai Ramanbhai Patel PW 2, Ex. 13, 3.
Bhanabhai Mandiyabhai, PW 3, Ex. 15, 4.
Somli, widow of Lalji Mandiya PW 4, Ex. 17, 5.
Shantaben, wife of Bablabhai PW 5, Ex. 18, 6.
Jagubhai Mangalbai PW 6, Ex. 19, 7.
Sumanbhai Ranchhodbhai Ahir PW 7, Ex. 21, 8.
Vanjibhai Baliram PW 8, Ex. 22, 9.
Kantibhai Somabhai Patel PW 9, Ex. 23, 10.

Ranjitsinh Makansinh Solanki PW 10, Ex. 24. 3.

The prosecution also relied on documentary evidence such as complaint, post-mortem notes, panchnama of the scene of offence, etc. to prove its case against the appellant. After recording the evidence of prosecution witnesses was over, the learned Judge recorded the statement of the appellant under S.313 of the Code. The appellant denied to have committed the offence charged against him. However, the appellant did not lead any defence evidence. After appreciating the evidence led by the prosecution, the learned Judge recorded the following conclusions :

- (1) Evidence of Somli, widow of Lalji Mandiya read with evidence of Dr.Gamanbhai Panchabhai Patel, PW 1, Ex.11 and the post-mortem notes exh. 12 indicate that deceased Laljibhai Patel died homicidal death on May 7, 1987.
- (2) Medical evidence shows that the injury sustained by the deceased was sufficient in the ordinary course of nature to cause death.
- (3) The evidence of (a) Bhanabhai Mandiyabhai, PW 3, Ex.15, (b) Somli, widow of Lalji Mandiya, PW 4, Ex.17 and (c) Shantaben, wife of Bablabhai, PW 5, Exh.18, proves beyond reasonable doubt that the accused caused injury on the head of deceased Lalji with wooden pestle. (4) In view of the

medical evidence and eye-witnesses' account, offence under s. 302 of I.P.Code is proved against the appellant by the prosecution, and the case does not fall within the purview of S.304 of I.P.Code.

4. Having regard to the above referred to conclusions the learned Judge convicted the appellant under S.302 of I.P.Code, and imposed the sentence which is referred to earlier, giving rise to the present appeal.

5. Mr.S.G.Uppal, learned Counsel appearing for the appellant has taken us through the entire evidence on record. On behalf of the appellant, it was submitted that the evidence of Somli widow of Lalji Mandiya, PW 4, exh.17 as well as the evidence of Shantaben wife of Bablabhai, PW 5, exh.18 and Bhanabhai Mandiya, PW 3, exh.15, does not inspire confidence and therefore, the present appeal should be accepted. In the alternative it was pleaded that there is neither pre-meditation nor strong motive for the appellant to cause death of his father and having regard to the attendant circumstances, the case would fall under S.304 Part-II of the I.P.Code, more particularly when only one blow was given. Under the circumstances, the learned Counsel for the appellant contended that the conviction should be altered from one under S.302 of the I.P.Code to S.304 Part-II of the I.P.Code.

6. Mr.S.R.Divetia, ld.APP submitted that the mother of the appellant would not falsely implicate the appellant, and allow the real culprit to go scot-free, and therefore, no error is committed by the learned Judge in placing implicit faith on her evidence. It was submitted that the case of the prosecution against the appellant is amply proved by the evidence of Somli, widow of Lalji Mandiya, PW 4 exh.17, Shantaben wife of Bablabhai, PW 5, exh.18 as well as Bhanabhai Mandiyabhai PW 3, exh.15, and therefore, the present appeal deserves to be dismissed. While dealing with the alternative plea advanced on behalf of the appellant, it was argued that after receiving reply from the deceased that loaves were lying in the cupboard, the appellant had gone in the house and come back with wooden pestle and had given blow on the head of the deceased with such a force that the deceased died on the spot, and therefore, the case would fall under S.302 of the I.P.Code and not under S.304 part-II of the I.P.Code as suggested by the learned counsel for defence. The fact that the deceased died a homicidal death is not disputed in the present appeal. Even otherwise, that fact is amply proved by medical evidence and evidence of eye-witnesses. Therefore, the finding recorded by the learned Judge that

deceased died a homicidal death is upheld.

7. Evidence of Somli, widow of Lalji Mandiya, PW 4, exh.17, indicates that on the day of incident, after returning from Vapi, the appellant had demanded loaves from the deceased and the deceased had informed the appellant that the loaves were lying in the cup-board. Her evidence further shows that the appellant had not taken dinner, but the deceased and she had taken the evening meals. Her evidence further indicates that after taking the evening meals, she and her husband deceased Lalji had gone to vada for the purpose of sleeping, and were sleeping on a cot. In her evidence, this witness has stated that at about 12'0 clock in the midnight, the appellant had come to the place where the deceased was sleeping and demanded loaves again, whereupon the deceased had informed the appellant that the loaves were kept in the cupboard. It is evident from her evidence which is given on oath that on receiving the reply from the deceased, the appellant had gone in the house and come back with wooden pestle, and had given blow on the head of the deceased. Though this witness is cross-examined at length, nothing has been brought on the record of the case to shake her version given in the examination-in-chief. It is significant to note that she is the mother of the appellant and wife of the deceased. At the relevant time, the appellant was residing with this witness. The fact that at the time when the incident took place, this witness was sleeping on the same cot on which the deceased was sleeping, is amply proved by the prosecution. Her evidence proves beyond reasonable doubt that the incident took place in her presence. She being the mother of the appellant and wife of the deceased would not allow the real culprit to go scot-free and implicate the appellant falsely for no reason. On overall view of the matter, we are of the opinion that the learned Sessions Judge has not committed any error in placing reliance on the evidence of Somli, widow of Lalji Mandiya. Her evidence also gets corroboration from the evidence of Shantaben, wife of Bablabhai, PW 5, exh.18 as well as Bhanabhai Mandiyabhai, PW 3, exh.15. Shantaben wife of Bablabhai has stated in her evidence that on shouts being raised by Somli, she had immediately rushed to the place where the incident had taken place and found the appellant near the cot of the deceased. She has specifically stated that Somli, widow of Lalji Mandiya, PW 4, exh.17 had informed all those who had collected near the cot of the deceased that the appellant had given blow with wooden pestle to the deceased. Though this witness is cross-examined on behalf of the defence, nothing is brought on the record of the case to doubt her version at all. Similarly, the

evidence of Bhanabhai Mandiyabhai PW 3, exh.15 indicates that he was informed about the incident by Somli, widow of Lalji Mandiya, and Somli had informed him that the appellant had given blow with wooden pestle on the head of the deceased. On the facts and circumstances of the case, we are of the opinion that no error is committed by the learned Judge in placing reliance on the evidence of Shantaben, PW 5, exh.18 as well as Bhanabhai Mandiyabhai PW 3, exh.15. The finding that the appellant caused injury to the deceased with wooden pestle on May 7, 1987 is eminently just and is upheld hereby.

8. The next question is as to which offence is committed by the appellant ? The prosecution has not proved any motive at all. Neither the evidence of Somli, widow of Lalji Mandiya, nor the evidence of Shantaben wife of Bablabhai, nor the evidence of Bhanabhai Mandiyabhai, indicates motive which promoted the appellant to commit the crime in question. The prosecution has also failed to prove that the appellant committed the murder with pre-meditation. On the contrary, it indicates that it was a sudden act. The evidence led by the prosecution does not show that there was any pre-meditation on the part of the appellant to cause death of deceased Laljibhai Mandiyabhai. Had there been any pre-meditation on his part, the appellant would have caused injury to the deceased immediately after returning from service and receiving reply from the deceased to the effect that the loaves were kept in the cupboard. On the facts and in the circumstances of the case, the prosecution has also not proved that the appellant had taken undue advantage or acted in a cruel or unusual manner. After the incident, the appellant had not tried to run away. It is the say of all the witnesses that the appellant was found standing near the cot of the deceased. On overall view of the matter, we are of the opinion that the ingredients which constitute the offence of murder as defined in S.300 of the I.P.code do not exist. The submission that as the appellant had come with wooden pestle at the place where the deceased was sleeping and inflicted blow on the vital part of his body, resulting in instantaneous death would indicate his intention to kill the deceased, cannot be accepted in view of the proved facts. As observed earlier, the prosecution has not proved that the appellant had any dispute whatsoever with the deceased. If he had pre-determined to kill his father, he would not have picked up a house-hold article, but would have used traditional weapon for the purpose of committing the crime in question. As noted above, the manner in which the incident has taken place does not indicate that the appellant tried to take undue advantage of the situation

or acted in cruel or unusual manner. The prosecution evidence does not show that there was previous enmity between the appellant and the deceased. On the contrary, the evidence shows that the deceased was staying with the appellant and was also cooking food for the other members of the family including the appellant. This will show that relations between the deceased and the appellant were cordial. On overall view of the matter, therefore, we hold that the appellant had done the act with the knowledge that it is likely to cause death without any intention to cause death, or to cause any bodily injury, which was likely to cause death, and therefore, the case would be governed under S.304 part-II of the I.P.Code.

9. For the foregoing reasons, the appeal is partly allowed. The conviction of the appellant under S.302 of the I.P.code is converted into one under S.304 part-II of I.P.Code. The learned Counsel for the appellant has stated at the bar that the appellant is in prison since May 8, 1987. Without deciding the question of sufficiency of sentence, we direct the appellant to suffer sentence already undergone. As the appellant has undergone the sentence imposed by the court, the Respondent is directed to set him at liberty immediately, unless required in any other case. Appeal is accordingly partly allowed. Muddamal articles are ordered to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

abraham*

This judgment is duly corrected and then transferred to the common pool. (Abraham A.D. - Private Secretary)